

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* WADE, Minors.

UNPUBLISHED  
September 15, 2016

No. 331585  
Wayne Circuit Court  
Family Division  
LC No. 10-495120-NA

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Before: GADOLA, P.J., and WILDER and METER, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her three minor children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (c)(ii) (other conditions exist that warrant termination), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). We affirm.

I. FACTS

On May 1, 2014, the Department of Health and Human Services (DHHS), filed a petition asking the court to take protective custody of respondent's three minor children. According to the petition, in January 2014, respondent left the three children alone in her apartment after putting them to sleep, left the stove on, and a grease fire started. Neighbors rescued the children from the home. As a result of the incident, respondent pleaded guilty to three charges of second-degree child abuse and received a five-year term of probation. The petition further asserted that respondent was homeless, lacked any income, and was noncompliant with her probation.

Following a preliminary hearing, the trial court authorized the petition and placed the children in protective custody. Respondent later admitted to the allegations in the petition, allowing the court to take jurisdiction over the children. In addition to the allegations in the petition, respondent admitted that she had been diagnosed with bipolar mood disorder. DHHS recommended that the court order respondent to participate in parenting skills classes, mental health services, psychiatric and psychological evaluations, parenting visits, random drug screens, and to obtain appropriate housing and a legal source of income. The court ordered respondent to comply with the services recommended by DHHS, with the exception of random drug screens because substance abuse was not a basis on which the court took jurisdiction over the children.

At subsequent review hearings, it was revealed that respondent continued to lack suitable employment and housing, she failed to consistently attend parenting classes and parenting visits, and she failed to comply with the terms of her probation, for which she was incarcerated from

August 28, 2014, through September 16, 2014. Following her incarceration, the court ordered respondent to comply with the terms of her probation in addition to her case service plan; however, respondent continued to ignore her probation obligations, was listed as an absconder, and a warrant was issued for her arrest on October 1, 2014.

In November 2014, respondent completed her court-ordered psychological examination, but during the examination, she admitted to illegally using marijuana. DHHS then filed a revised petition for jurisdiction, adding an allegation regarding respondent's substance abuse. At a May 5, 2015 hearing, respondent admitted that she told the psychologist that she used marijuana two or three times a day when she was stressed. Respondent also admitted that she used marijuana that morning before coming to court. Caseworker Amanda Christenson reported that respondent said she had obtained suitable housing, but DHHS had not yet verified the housing. Respondent also provided two paystubs from working as a home health aide, but she failed to fully participate in her individual therapy, parenting classes, and parenting visits. Following the hearing, the court ordered respondent to submit to drug screens and drug treatment as part of her case service plan.

On May 27, 2015, respondent was arrested on her outstanding warrant and was sentenced to 8 months' to 10 years' imprisonment. Thereafter, the court ordered DHHS to file a petition to terminate respondent's parental rights.<sup>1</sup> On January 22, 2016, the court held a bench trial on the petition. At trial, Christenson testified that respondent was in prison as a result of failing to comply with the terms of her probation. The children were taken into protective custody on May 1, 2014, and they were placed together in a licensed, pre-adoptive foster home on November 18, 2014. Christenson testified that, although respondent completed her psychological examination in November 2014, she failed to complete any of the other court-ordered services despite multiple referrals. At the time of her most recent incarceration, respondent had not provided any proof of suitable housing, and although she submitted two paystubs, it was questionable whether she would be able to support three children on her income. Respondent failed to comply with the terms of her probation, and her individual therapist terminated services after respondent missed several therapy sessions. Christenson explained that DHHS referred respondent for a psychiatric evaluation on three separate occasions, but respondent missed all three of the scheduled appointments. DHHS also referred respondent for parenting classes on three separate occasions, but she only attended five classes despite being offered free transportation. Respondent attended only 18 of 43 parenting visits during the course of the proceedings.

Christenson testified that when respondent attended parenting visits, she was affectionate with her children and it appeared that they shared a bond. However, respondent had difficulty redirecting the children when they misbehaved. Christenson noted that respondent was not always focused on the children during visits, and the children frequently engaged in independent play. She said that when the children came into protective care, they exhibited survival habits like hoarding food and drinking excessive amounts of water. Respondent's oldest child had been

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<sup>1</sup> While in prison, respondent gave birth to a fourth child on January 8, 2016. Her parental rights with respect to that child are not implicated in the current appeal.

diagnosed with posttraumatic stress disorder (PTSD) and attention-deficit/hyperactivity disorder (ADHD). Christenson recommended terminating respondent's parental rights.

Following trial, the court issued an order terminating respondent's parental rights to her three minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), and finding that termination was in the best interests of the children. Specifically, the court noted that between the time of adjudication and respondent's incarceration, she failed to complete any of the court-ordered services, with the exception of attending the psychological examination. The court also noted that the children were placed together in a pre-adoptive foster home where all of their needs were being met, and they were happy and healthy.

## II. STATUTORY GROUNDS

Respondent first argues that the trial court clearly erred by finding that sufficient evidence warranted terminating her parental rights under any of the statutory grounds found in MCL 712A.19b(3). We review for clear error a trial court's decision to terminate parental rights. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A court's decision "is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* at 209-210.

"In order to terminate parental rights, the court must find that at least one of the statutory grounds set forth in MCL 712A.19b has been met by clear and convincing evidence." *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). Below, the trial court relied on MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) to terminate respondent's parental rights. Termination is appropriate under MCL 712A.19b(3)(g) if "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(j) states that termination is warranted if "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." A parent's failure to substantially comply with a court-ordered case service plan is evidence that the parent will not be able to provide his or her child with proper care and custody, *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014), and is evidence that the parent may cause a substantial risk of harm to the child's life, physical health, and mental well-being. *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000).

In this case, respondent's case service plan required her to find suitable housing, obtain legal employment, submit to psychological and psychiatric evaluations and follow their recommendations, complete parenting classes, visit the children, and comply with the terms of her probation. Respondent was also ordered to complete drug screens and to participate in substance abuse therapy after she admitted to using marijuana. Although respondent completed her psychological examination, she failed to substantially comply with any of the other court-ordered services. At the time of the termination hearing, respondent was incarcerated for noncompliance with the terms of her probation, and although she provided two paystubs before her incarceration, she failed to provide any documentary proof of suitable housing. Respondent failed to substantially participate in individual therapy, parenting classes, and her psychiatric evaluation, despite being given multiple referrals and being offered free transportation.

Respondent attended only 18 of 43 parenting visits during the course of the proceedings. Although respondent claims she is currently participating in some services in prison, considering her lack of compliance with her case service plan throughout the proceedings as a whole, the trial court did not clearly err by concluding that termination was warranted under MCL 712A.19b(3)(g) and (j). See *White*, 303 Mich App at 710; *Trejo*, 462 Mich at 346 n 3.

The trial court also did not clearly err by concluding that MCL 712A.19(3)(c)(i) was established by clear and convincing evidence. This statutory ground exists if 182 or more days have elapsed since the initial dispositional order and “the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services.” *White*, 303 Mich App at 710 (quotation marks and citation omitted). The conditions that brought the children into protective custody were respondent’s lack of suitable housing and employment, and her three child abuse convictions. Despite being offered a multitude of services, at the time the trial court terminated respondent’s parental rights, she was in prison with no demonstrable ability to provide support or housing for the children. Before her incarceration, respondent did not provide any documentary proof of suitable housing for the children, and although she provided two paystubs from working as a home health aide, it was questionable whether respondent’s level of income was sufficient to support the three children. Regarding her child abuse convictions, respondent failed to comply with the terms of her probation, and she failed to substantially participate in parenting classes, individual therapy, and parenting visits throughout the proceedings. The children were in protective custody for approximately 20 months at the time the trial court issued its termination order, well over the 182-day threshold required by MCL 712A.19b(3)(c). Under the circumstances, the trial court did not clearly err by terminating respondent’s parental rights.<sup>2</sup>

### III. BEST INTERESTS

Respondent next argues that the trial court clearly erred by determining that termination of her parental rights was in her children’s best interests. We review for clear error a trial court’s decision that termination of parental rights is in a child’s best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

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<sup>2</sup> The trial court also relied on MCL 712A.19b(3)(c)(ii) to terminate respondent’s parental rights, which provides that termination is appropriate if 182 or more days have elapsed and “[o]ther conditions exist that cause the child to come within the court’s jurisdiction,” and the parent received recommendations to rectify the conditions, but failed to do so despite notice, a hearing, and a reasonable opportunity. It seems that the “other condition” for purposes of MCL 712A.19b(3)(c)(ii) would be respondent’s marijuana use. However, considering the nature of respondent’s admitted use and the fact that she was incarcerated shortly after her admission without a significant opportunity to participate in substance abuse treatment or drug screens, it is not clear that this fact alone would provide sufficient evidence to terminate respondent’s parental rights. In any event, we need not resolve this question because the other three statutory grounds relied on by the trial court were established by clear and convincing evidence. *In re Utrera*, 281 Mich App 1, 24; 761 NW2d 253 (2008).

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “The trial court should weigh all the evidence available to determine the children’s best interests.” *White*, 303 Mich App at 713. Courts may consider factors such as “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). A finding that termination is in the best interests of a child must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

A preponderance of the evidence supported that termination was in the children’s best interests. Although evidence at the termination hearing showed that respondent shared some bond with her children, the strength of a parent’s bond with his or her children is only one factor among many that the trial court was permitted to consider. *White*, 303 Mich App at 714. The court was also allowed to consider that respondent had a history of failing to comply with her case service plan by failing to attend parenting classes, attend individual therapy sessions, comply with the terms of her probation, and secure and provide proof of appropriate housing and income. Respondent attended only 18 of 43 parenting visits during the course of the proceedings. The children were between three and five years of age at the time the trial court terminated respondent’s parental rights, and they had been in protective care for approximately 20 months. The children had been living together in a pre-adoptive foster home for over a year. The record showed that respondent’s oldest child had been diagnosed with ADHD and PTSD, and the children exhibited survival habits when they came into protective care. Christenson also testified that respondent was not always focused on the children during parenting visits, and the children frequently engaged in independent play. On this record, the trial court did not clearly err by finding that termination of respondent’s parental rights was in the children’s best interests.

Affirmed.

/s/ Michael F. Gadola

/s/ Kurtis T. Wilder

/s/ Patrick M. Meter